THE HON'BLE SRI JUSTICE B.PRAKASH RAO

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WRIT PETITION NO.22429 OF 1994

DATED : 20.08.2005

Between:

Mulugori Narasamma W/o Yellaiah, R/o Khanapur,

Adilabad Mandal, Adilabad District & Another

…..Petitioner

A n d

The District Collector, Adilabad & 3 others

……Respondents.

Counsel for the petitioners : Mr.K.Rama Subba Rao

Counsel for the Respondents : G.P for Revenue

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ORDER:

Heard Sri K.Rama Subba Rao, learned counsel appearing for the petitioner and the learned Government Pleader for Revenue appearing for the respondents.

2. In this writ petition, the petitioners seek a writ in the nature of *Mandamus* against the respondents herein to demarcate the land bearing Sy.Nos.21/1/A and 21/1/D admeasuring 10 acres each situated in Dasnapur village, Adilabad Mandal and for issuance of supplementary Sethwar thereof, and pass orders.

3. The claim of the petitioners rests on the basis that late husband of the first petitioner and late father of the second petitioner Sri Yellaiah and Sri Lakshmaiah along with two others were assigned the Government Porambok land of 10 acres each in Survey No.21/1 situated in Dasnapur village, Adilabad Mandal since they were landless poor Harijans. The said survey No.21/1 consists of vast extent of land, out of which 40 acres were assigned to four persons at the rate of 10 acres each. It is stated that proposals were initiated in File No.47/11 of 1952 and subsequent to the assignment made under Laoni Rules, they were put in possession respectively. However, having regard to great chunk of land, petitioners made representation to the authorities for making sub division of the land pointing out individual extents. However, the same was not made. Instead, in the year 1981 under a misconception, treating the said land as Government land, respondents sought to divide the land into house site plots for allotment to teachers. Therefore, the petitioners had to file earlier a Writ Petition in W.P.No.2125/1981 challenging the said action of allotment to others and they also obtained interim stay of allotment of land pending writ petition on 2.4.1981. The said writ petition was allowed on 9.4.1986 with a further direction that possession of the assignees was not to be disturbed. Once again, the petitioners' predecessors in title and other assignees went on making representations for the purpose of sub-division and they paid necessary charges for demarcation and issuance of supplementary Sethwar under Challan Nos.4192, dated 25.7.1980 and 4185 dated 28.7.1986 on the file of State Bank of Hyderabad, Adilabad Branch. In spite of the same, no action was taken. However, memo No.A1/1932/85, dt.1.9.1987 was issued stating that the land claimed by the petitioners was already alienated in favour of Government Polytechnic College, Adilabad-respondent No.4. Therefore, the petitioners had to file another writ petition in W.P.No.15136/1987 challenging the said alienation of land in favour of

respondent No.4 and the petitioners obtained interim orders in W.P.M.P.No.20133/87 on 13.10.1987 restraining the respondents from interfering with their possession. However, the said writ petition was dismissed and thereafter, on further appeal in Writ Appeal No.776/90, a Division Bench of this Court called upon the respondents to file additional affidavit pointing out the exact position. Accordingly, in the counter affidavit filed on behalf of the respondents, it was stated that the land, which was alienated to respondent No.4 is totally different from the land, which was assigned to the petitioners. The said Writ Appeal was disposed of on 5.9.1990 leaving it open to the petitioners to approach the authorities to safeguard their rights in respect of their land. Hence, the petitioners again filed representations dated 19.1.1990 and 10.10.1991 for demarcation of their respective lands to an extent of 10 acres each. In spite of the said representations, no action was taken. The petitioners filed Contempt Case No.482/92 and the same was disposed of on 31.12.1992. On further appeal, the Supreme Court of India in S.L.P.No.17943/94, as per orders dated 28.10.1994 held that any observations made in these proceedings would not be deemed to be concluded and the petitioners are entitled to canvass the correctness before the appropriate authorities.

4. In the meanwhile, the first respondent issued notices on 4.4.1994 to show cause as to why original assignments made in the year 1952 should not be cancelled. In fact, the said show cause notice was issued in favour of the original assignees who died long back and it further points out that the land assigned was in fact alienated to the 4th respondent in the year 1982 and 1990. Such an action is wholly contrary to the stand taken by the respondents herein before the Division Bench of this Court in W.A.No.776/90. Therefore, the petitioners submitted a detailed explanation on 27.4.1994 pointing out all these aspects. Yet, no action has been taken. Therefore, the petitioners had to file another writ petition in W.P.No.9876/92, which was disposed of on 6.8.1992 with a direction to consider the representation dated 19.11.1990 within 8 weeks from the date of receipt of copy of the order and pass appropriate orders in accordance with law, especially in the light of the orders of the Division Bench in W.A.No.776/90. Still, no action has been taken. Therefore, the entire action on the part of the respondents in once again falling back on the plea that the land belongs to Government and the same is alienated in favour of 4th respondent is wholly unsustainable and illegal and further, the petitioners being

landless poor Harijans and the assignment having been made as long back as in the year 1952 needs no variation, much less cancellation. Hence, petitioners sought directions for the purpose of proper demarcation of their respective lands and for issuance of Sethwar.

5. In the counter affidavit filed on behalf of the first respondent, it is stated that no doubt, there has been proposal and endorsement for allotment of 40 acres of land in favour of four persons at the rate of 10 acres each. However, no assignment certificates were issued nor physical possession of the land was delivered and therefore, it was only a paper assignment and thus no claim can be made by the petitioners. It was further pointed out that said land was sought to be used for construction of Teachers Housing Colony and the petitioners earlier attempt in this Court by way of writ petitions were proved futile. Referring to the orders passed by this Court in the earlier writ petition, it is stated that the petitioners are trying to grab the land under the guise of paper assignment and therefore question of any sub-division does not arise.

6. In the counter affidavit filed on behalf of respondent No.4, their main claim rests on the ground that they have established a college in the year 1981 and since then it was located on temporary basis in an old Public Works Department Building. There was a requisition and accordingly the Government transferred land to an extent of 25 acres for the purpose of construction of permanent buildings etc and the said buildings have already come up and the same was inaugurated by the Hon'ble Minister on 24.2.1993. In view of the same, it is stated that the petitioners' claim is hopelessly unsustainable and any interdiction in regard to the land in possession of respondent No.4 would not only disturb the institution but also the student community, which includes Scheduled Caste, Scheduled Tribe, Backward Class and other weaker Sections. There are no merits in the writ petition and the same is liable to be dismissed.

7. In reply, on behalf of the petitioner, the very same claim is sought to be reiterated, by placing reliance on the assignments and also orders passed by this Court including the one by the Division Bench. Having heard the learned counsel on either side and also on perusal of the material, the only short question, which arises for

consideration in this writ petition is as to whether the petitioners can claim for sub division of the lands, which have been assigned to them individually.

8. There is no dispute to the various proceedings, especially filing of the writ petitions on the earlier occasion, on behalf of the petitioners and the assignees in this Court and the orders passed therein. The petitioners' claim rests on the basis of the assignment made in File No.47/11 of 1952 and having regard to the same, petitioners filed various representations for sub-division of the land. Even in the counter affidavit, there is no serious dispute in regard to the endorsement made by the then Collector for allotment of 40 acres of land in favour of four persons at the rate of 10 acres each. However, it is their case that it is only a paper assignment and no assignment certificate is granted or there was any delivery of possession. On the face of it, this plea is quite contrary to the stand taken by the respondents on the earlier occasion, especially before the Division Bench while the proceedings were pending in W.A.No.776/90, wherein the stand of the respondents is that the land which has been assigned to the petitioners is totally different from the land which has been transferred in favour of respondent No.4. The orders in the said Writ Appeal have already become final and the respondent No.4 cannot resile from the stand earlier taken and try to dispute the very assignment as such at this late hour. Admittedly, the survey in respect of which the petitioners are claiming consists of vast extent of land. There is also no serious dispute in regard to the fact that on the extent of land, which has been allotted in favour of respondent No.4, buildings have already come up and the same is also functioning. It is very difficult to accept the contention now sought to be raised on behalf of the respondents denying the very assignment in favour of the petitioners at this late hour, more so, in view of the chequered events and especially the stand taken by the respondents themselves on the earlier occasion before the Division Bench. In view of the same, it has to be held that the petitioners are entitled to be shown their respective areas to an extent of 10 acres each, which has been assigned to them, as long back as in the year 1952 and consequently issue necessary revenue title documents. Hence, I do not find any merits in the objections raised on behalf of the respondents or any justification in their stand.

9. The writ petition is accordingly allowed. The respondents 1 to 3 are directed to take immediate steps for the purpose of demarcation of the land of the petitioners to an extent of 10 acres each as claimed by them and fix the boundaries and issue necessary Sethwar and also give effect to the same in all the revenue records and accounts. The entire exercise shall be done within a period of one month from the date of receipt of a copy of this order. It is needless to mention that the petitioners shall be given due notice and opportunity before giving effect to such demarcation. No costs.

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B.PRAKASH RAO, J

Dated: 20.08.2005

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THE HON'BLE SRI JUSTICE B.PRAKASH RAO

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(For pronouncement on 20.08.2005)